

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 886 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

ABDULRAZAK ABDULSATTAR TAILOR

Versus

ZAHIDABEGAM D/OSAIYED MUSTAFA SAIYED NIZAMUDDIN

Appearance:

MS KJ BRAHMBHATT for MS VASUBEN P SHAH for Petitioners
MR MG NAGARKAR for MR SN SHELAT for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 03/05/2000

ORAL JUDGEMENT

#. This civil revision application is directed against the judgment and order of the learned Assistant Judge, Surat in Regular Civil Appeal No.110/83 by which the

learned appellate Judge was pleased to dismiss the appeal of the original plaintiffs and the decree of the trial court was confirmed. The petitioners are the original plaintiffs. They instituted the suit being Rent Suit No.266/79 in the Small Causes Court at Surat. It is the case of the plaintiffs in the said suit that, they are the owners and landlords of the building situated in Ward No.10, Nondh Nos.2262, 2263, 2356, 2358 and 2362 in Chowk Bazar, Surat. Deceased Saiyed Mustafa Saiyed Nizamuddin was the tenant of Shop No.2 at the monthly rent of Rs.20/-. The said tenant - Saiyed Mustafa died on 28.3.1978. According to the plaintiffs, at the time of his death, the defendants were not carrying the business with him in the suit shop. The defendant No.1 is the widow, the defendant No.2 is daughter, the defendant No.3 is mother-in-law, while the defendant No.4 is nephew of the deceased Saiyed Mustafa. It is also the case of the plaintiffs that, since none of the aforesaid persons were doing the business with the deceased tenant, none of them is entitled to the transmission of the tenancy as contemplated by Section 5(11)(c) of the Bombay Rent Act. It is also the case of the plaintiffs that the defendants have sublet the suit premises to one Musa since long. It is also the say of the plaintiffs that the defendants are also in arrears of rent from 1.11.1965 and inspite of the demand notice, they have neglected to pay arrears of rent. On the aforesaid grounds, the aforesaid suit for eviction was filed.

#. The trial court consolidated the said suit with the standard rent application filed by the defendants being Application No.1438/78. The trial court after appreciating the evidence on record, came to the conclusion that, there was no substance in the suit for possession. Accordingly, the suit for possession was dismissed. The trial court also passed the decree for Rs.600/- towards arrears of rent against the defendant nos.3 and 4.

#. The original plaintiffs carried the matter in appeal by way of Regular Civil Appeal No.110/83. The aforesaid appeal was dismissed by the learned appellate Judge by confirming the decree of the trial court.

#. This revision application has been filed by the original plaintiffs challenging the order of the appellate court by invoking the jurisdiction of this court under section 29(2) of the Bombay Rent Act.

#. At the time of hearing of this civil revision application, it was argued by Ms.K.J.Brahmbhatt that,

since there is no transmission of the tenancy in favour of the defendants, none of the defendants are entitled to the protection under section 5(11)(c) of the Bombay Rent Act. It is argued by Ms.Brahmbhatt that, since the defendants were not doing the business with the deceased tenant at the time of his death, they cannot get the benefit of section 5(11)(c) of the Bombay Rent Act.

#. As against that, it was argued by Mr.Nagarkar, learned advocate for the respondents that, even during the life-time of the original tenant, the defendants were doing the business alongwith him, and therefore, the courts below were justified in dismissing the suit of the plaintiffs and that the question of transmission of the tenancy was rightly decided by both the courts below.

#. It is not in dispute that, the premises in question is the business premises. As per the provision of section 5(11)(c) of the Bombay Rent Act, any member of the tenant's family carrying on the business, trade or storage with the tenant in the said premises at the time of the death of the tenant as may continue, after his death, to carry on the business, trade or storage, as the case may be, in the said premises and as may be decided in default of agreement by the court. The plaintiff No.1 himself has admitted in his evidence that, defendant nos. 1 to 4 are the heirs of the deceased Saiyed Mustafa. It has come in the evidence that the original tenant-Saiyed Mustafa was suffering from heart disease and as per the say of the defendants, they were all staying jointly as members of the family and accordingly all the defendants were residing with the original tenant and were doing the business in the suit shop alongwith the said deceased tenant. The plaintiff No.1 in Suit No.266/78 has clearly admitted that the defendant nos.1 to 4 are the heirs of the deceased Saiyed Mustafa and they were residing with the said deceased Saiyed Mustafa. The appellate court has considered the said admission of the plaintiff No.1 in para 11 of its judgment. In view of the fact that all the defendants were staying with the original tenant which included the widow of the deceased tenant, his daughter, mother-in-law and nephew, it cannot be said that, they were not the members of the family. It is found that, all the family members were doing the business and they have subsequently continued the said business after the death of the said tenant. As per the scheme Section 5(11)(c) of the Bombay Rent Act, any member of the tenant's family doing the business at the time of his death and has continued the business thereafter would be entitled to inherit the tenancy

rights. On appreciation of the evidence, it has been rightly found by the courts below that, the defendant nos.1, 3 and 4 were doing the business with the deceased tenant in the suit shop as it was not possible for the tenant to do business alone because he was suffering from heart disease since long.

#. In view of the aforesaid facts and circumstances, the courts below were justified in reaching to the conclusion that, on the death of Saiyed Mustafa, the tenancy rights stand transmitted in favour of the defendant nos. 1, 3 and 4. The appellate court also found that the defendant No.1 - Hajarabibi, widow of the original tenant - Saiyed Mustafa died during the pendency of the suit. She found to have inherited the tenancy rights of her husband, and after her death, her tenancy rights were transmitted in favour of the defendant nos.3 and 4. The finding arrived at by the courts below that the tenancy rights are transmitted in favour of the defendant nos.3 and 4 cannot be said to be in any way perverse or illegal. I, therefore, do not find any substance as regards the question about the transmission of the tenancy in favour of the defendant nos.3 and 4 is concerned.

#. So far as the question about the sub-tenancy is concerned, it is found that, one Musa was doing the work in the suit shop. According to the defendants, he was working as the servant. The learned appellate Judge found that, except the bare words of the plaintiffs, there is nothing on record to show that the suit premises was parted in favour of the said Musa or that he was the subtenant in any manner. It was found that, it is not necessary that the tenant himself should do the business in the suit shop and that he cannot engage even a servant. On appreciation of the evidence, therefore, it is found that, there was no substance in the allegation about the subletting as alleged by the plaintiffs. I, therefore, do not find any error in the aforesaid finding.

##. This court while exercising revisional jurisdiction cannot take contrary view by reappreciating the evidence on record. Even, otherwise the view taken by the courts below is based on the appreciation of the evidence on record and the same is required to be accepted. The learned appellate Judge has found in para 28 of his judgment that, on receipt of the demand notice, the defendants remitted remaining amount of arrears of rent and during the pendency of the suit also, the defendants have deposited all the arrears of rent in the court. It is found that, he was ready and willing to pay the rent.

The defendants have already deposited arrears of rent in the previously instituted suit and have tendered remaining amount by money order in response to the demand notice. However, the same was refused. In that view of the matter, the defendants were rightly given protection of section 12(1) of the Bombay Rent Act as they were ready and willing to pay the rent. In that view of the matter, there is absolutely no substance so far as the suit on the ground of arrears of rent is concerned. No other points were canvassed by Ms.Brahmbhatt.

##. Since, I do not find any substance in this civil revision application, the same is required to be dismissed. Accordingly, civil revision application is dismissed. Rule discharged. No order as to costs.

(P.B.Majmudar,J.)
(pathan)